UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAO-SUNG LIU A/K/A K.S. LIU, and GINA HIU-HUNG LIU A/K/A HUI-HUNG SIE A/K/A GINA LIU,

Petitioners,

Case No.

-against-

HUGH MO, ESQ. and THE LAW FIRM OF HUGH H. MO, P.C.,

Respondents.

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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THEIR PETITION TO COMPEL ARBITRATION

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Petitioners Kao-Sung Liu a/k/a K.S. Liu ("KS Liu") and Gina Hiu-Hung Liu a/k/a Hui-Hung Sie a/k/a Gina Liu ("Gina Liu")(collectively, "Petitioners") respectfully submit this Memorandum of Law in Support of their Petition to Compel Arbitration.

PRELIMINARY STATEMENT

Petitioners hired Respondents The Law Firm of Hugh H. Mo, P.C. and Mr. Hugh Mo (collectively, "Respondents") pursuant to a written retainer agreement dated May 3, 2011 (the "Retainer") to represent them in a litigation entitled *Sang Lan v. AOL Time Warner, Inc. et al,* Docket No.: 11-CV-2870 (TPG), United States District Court, Southern District of New York (the "Litigation"). The Retainer contains an arbitration provision. The arbitration provision explicitly states: "In the event of a dispute over legal fees, you [i.e. Petitioners] have the right to resolve the dispute through binding arbitration in New York City." (*See* Exhibit A to the Petition).

Respondents represented Petitioners from 2011 through January 2016 and Petitioners paid the Respondents a total of almost one million ($1,000,000) dollars. Respondent Hugh Mo, Esq. was also an individual defendant in the Litigation although he never advised Petitioners of the potential conflict of interest.

On March 7, 2017, Petitioners issued a demand for arbitration to Respondents in connection with a fee dispute between the parties concerning, *inter alia,* (1) failure by Respondent Mo to separate work performed on his self-representation and work performed on behalf of the Petitioners, (2) significant duplicate billing, (3) billing statements that are inconsistent with the terms of the Retainer, and (4) repeated failure to give the required notice when making a sanctions motion under Rule 11 (February 18, 2015 and May 15, 2015). Rather than abide by the terms of Respondents' own Retainer, Respondents' refused to proceed to

arbitration. (*See* Exhibit B to the Petition). In so doing, Respondents improperly conflate their view of the merits of Petitioners' fee dispute with their obligation to arbitrate regarding those claims.

Where, as here, there is a valid and enforceable arbitration provision in a contract, a court of competent jurisdiction may issue an "order directing that such arbitration proceed in the manner provided for in such agreement." *See* 9 U.S.C. § 4. Accordingly, Petitioners respectfully request that their Petition to Compel Arbitration be granted.

ARGUMENT

I. THE COURT SHOULD COMPEL ARBITRATION IN ACCORDANCE WITH RESPONDENTS' RETAINER AGREEMENT

A. Federal Law Requires That Arbitration Provisions Be Enforced

Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2 (the "FAA"), states that a contract provision:

> [E]videncing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction…shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for revocation of any contract. 9 U.S.C. § 2. *See also Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20, 24-25 (1991), *Circuit City Stores, Inc. v. Adams,* 532 U.S. 105, 109 (2001).

Section 4 of the FAA further provides that a

> Party aggrieved by the alleged failure, neglect or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court, which save for such agreement, would have jurisdiction…for an order directing that such arbitration proceed in the manner provided for in such agreement. 9 U.S.C. § 4.

It is well settled arbitration is strongly favored as a matter of policy and any ambiguities in the scope of an arbitration clause should be resolved in favor of arbitration. *Moses H. Cone Memorial Hisp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). Thus, a court must compel

arbitration "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Techs., Inc. v. Commc'ns Workers of Amer.*, 475 U.S. 643, 650 (1986).

Additionally, Section 5 of the FAA provides that a Court may appoint an arbitrator if the method to provide an arbitrator is not specified in the arbitration agreement. Specifically Section 5 states:

> If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator. 9 U.S.C. § 5 (emphasis added).

B. The Arbitration Agreement Contained in the Retainer is Both Applicable and Enforceable

The arbitration provision in the Retainer expressly provides that "[i]n the event of a dispute over legal fees, you have the right to resolve the dispute through binding arbitration in New York City." (See Exhibit A to the Petition). Petitioners have a dispute regarding Respondents' fees and have demanded arbitration to resolve that dispute. (See Exhibit B to the Petition). Respondents' disagreement as to the legitimacy of Petitioners' claims is immaterial. Petitioners and Respondents entered into the Retainer which contains an agreement to arbitrate and Respondents should be compelled to defend this dispute in arbitration.

CONCLUSION

Respondent's refusal to arbitrate in accordance with the Retainer is baseless and demonstrates yet another example of Respondents' misconduct that is the basis for Petitioners' claims. The Petition to Compel arbitration should be granted.

Dated: New York, New York
March 27, 2017

Respectfully Submitted,

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BRAVERMAN, LLP

By: _____
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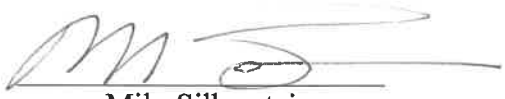
CERTIFICATE OF SERVICE

I hereby certify that, on March 27, 2017, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.



Milo Silberstein